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UNITED STATES GENERAL ACCOUNTING OFFICE

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*B-187246, June 15, 1977, distinguished by B-215640,
Jan. 14, 1985.*

GENERAL GOVERNMENT MATTERS
APPROPRIATIONS AND MISCELLANEOUS

B-215431, B-215432 Jan. 2, 1985
ACCOUNTABLE OFFICERS--RELIEF--DUPLICATE CHECKS ISSUED--
IMPROPER PAYMENT

On reconsideration of our decisions B-215431, July 9, 1984, and B-215432, July 6, 1984 et al., the General Accounting Office again denies relief to a financial accounting officer for improper payments made from his account. Relief is denied under 31 U.S.C. 3527(c) because no collection effort has been taken against the financial institutions responsible for negotiating both the original and substitute checks.

B-216602 Jan. 4, 1985
VEHICLES--GOVERNMENT--HOME TO WORK TRANSPORTATION--GOVERNMENT
EMPLOYEES--PROHIBITION--EXEMPTIONS

Transportation of Solicitor of Labor between his home and office in a Government vehicle during his temporary disability would be permissible under an exception to the general home-to-work prohibition of 31 U.S.C. 1344 in cases where the Government would be deprived of essential services in an emergency situation in the absence of Government-provided transportation. See 54 Comp. Gen. 1066 (1975). However, the Solicitor should be required to reimburse the Government, at least to the extent of his normal commuting costs.

B-217358 Jan. 7, 1985
RECORDS--DESTRUCTION--AUTHORITY

GAO has no legal objection to a request for Records Disposition Authority (SF 115) submitted by the Bureau of Labor-Management Cooperative Programs, Department of Labor, for approval to dispose of records relating to programs administered

by the Bureau (including records relating to the Redwood Employee Protection Program (Item 3) and case files of disputed claims under the Urban Mass Transportation Act Program (Item 4) after specified periods of time. Since the proposed disposition periods for Items 3 and 4 as well as the other Items in the proposed disposition schedule are adequate to protect the legal interest of the United States, we have no objection to the adoption of the proposed disposition periods.

B-216726 Jan. 9, 1985

*ACCOUNTABLE OFFICERS--RELIEF--ILLEGAL OR ERRONEOUS PAYMENTS--
WITHOUT FAULT OR NEGLIGENCE*

Relief granted for improper payment solicited from fraudulent endorsement based on agency findings that Finance and Accounting Officer had established adequate controls and procedures to safeguard funds for which accountable, and that cashier had followed prescribed procedures in cashing checks. Although the record did not include a copy of the office procedure in effect at the time of the loss or indicate that identification of the endorser was required when the check was presented by the forger, since some 2 1/2 years elapsed between the time of the loss and commencement of the investigation it is quite possible that records were destroyed that could have shown the effective operating procedure, and as check cashing is a routine activity it would be unlikely that anyone would have remembered the particular check cashed by the forger.

B-217093 Jan. 9, 1985

*DEPARTMENTS AND ESTABLISHMENTS--SERVICES BETWEEN--EDUCATIONAL
PROGRAMS*

The Japan-United States Friendship Commission may transfer funds to the Department of Education for a study of education in Japan pursuant to the Commission's authority to support Japanese-American cultural and educational activities not mentioned in,

but which are consistent with, subsections (1)-(5) of section 2902(b) of title 22 of the United States Code. The authority provided by subsection (6) is very broad and its legislative history shows that the Commission is to have some discretion in determining which projects are to be funded under it.

The Commission's authority to "enter into contracts, grants, or other arrangements", 22 U.S.C. 2905(8), particularly the language "or other arrangements" is sufficiently broad to encompass transfers of Commission funds so long as the transfer is to an entity carrying out a function set forth in 22 U.S.C. 2902(b).

B-202278 Jan. 18, 1985

LEGISLATION--RECOMMENDED BY GAO--PRESIDENTIAL INAUGURAL CEREMONIES--PARTICIPATION BY FEDERAL AGENCIES--EXTENT AND TYPES OF PARTICIPATION

GAO declines at this time to enforce findings in 62 Comp. Gen. 323 (1983), that certain services provided by the Department of Defense in support of the 1981 presidential inauguration were not legally authorized. GAO reminds Senator Proxmire, to whom the earlier opinion was also addressed, that we had urged Congress to undertake a comprehensive review of laws pertaining to presidential inaugurations in the light of the need for wider planning and logistical support. A GAO post-audit of expenditures for the 1985 inauguration is now scheduled to provide a factual basis for congressional consideration of the needs and the extent of existing authority to fill these needs. Meanwhile, guidelines issued by the Office of the White House Counsel help to remedy many of the improprieties identified by GAO in 1983.

B-213977 Jan. 18, 1985

DISBURSING OFFICERS--RELIEF--ERRONEOUS PAYMENTS--NOT RESULT OF BAD FAITH OR NEGLIGENCE

Upon reconsideration, Army disbursing officer is relieved of liability for loss in his account due to payee cashing an original and replacement check.

New submission sets out additional facts evidencing that Army regulation, which apparently had been violated so as to preclude finding of due care, actually had been complied with. Thus, total case record now establishes that improper payment was not result of bad faith or lack of due care.

B-216239 Jan. 22, 1985

LOBBYING--APPROPRIATION PROHIBITION--PROMOTING PUBLIC SUPPORT OR OPPOSITION

Secretary of the Air Force did not violate appropriations restrictions in the DOD 1984 appropriation act against the use of Federal funds for lobbying and contractor advertising when he urged Government contractors in a speech to sponsor advertisement for a stronger defense establishment. The Secretary was urging contractors to use their profits (not Federal funds) for such purpose.

B-214278 Jan. 25, 1985

STATES--FEDERAL AID, GRANTS, ETC.--ALLOCATION OF FUNDS

In the absence of a specific statutory authority Federal grant-in-aid funds from one program may not be used to satisfy the local share requirements of another Federal grant-in-aid program. Neither the FmHa Water and Waste Disposal Development Grant Program nor the EPA treatment works construction grant program contain such authority. However, two or more agencies may contribute to the same project (if each is authorized to do so) provided that the total Federal grant payment does not exceed the statutory limit.

STATES--FEDERAL AID, GRANTS, ETC.--FEDERAL STATUTORY RESTRICTIONS--STATE FUNDS CONTRIBUTIONS

A local share of program costs is required under the FmHA Water and Waste Disposal Development Grant Program. Where a statutory provision specifies that the Federal contribution

to a local project will not exceed a particular percentage of project costs, the remaining project costs should be funded with non-Federal monies in the absence of a clear indication of contrary Congressional intent.

WORDS AND PHRASES--"PROJECT COSTS"

The term "project costs" mean, in this context, costs eligible for grant assistance under a particular grant program plus the remaining non-Federal share. While another agency may not contribute the same project costs if the first agency has made the maximum allowable grant it is free to make a grant for other costs, not eligible under the first agency's grant authority, to the extent permitted by its own statute.

B-217579 Jan. 28, 1985

DISBURSING OFFICERS--RELIEF--ERRONEOUS PAYMENTS--NOT RESULT OF BAD FAITH OR NEGLIGENCE

Relief is granted Army disbursing official and his supervisor under 31 U.S.C. 3527(c) from liability for improper payment resulting from payee's negotiation of both original and substitute military checks. Proper procedures were followed in the issuance of the substitute check, there was no indication of bad faith on the part of the disbursing official and his supervisor, and subsequent collection attempts have been pursued.

B-217477 Jan. 30, 1985

FUNDS--TRUST--UNIFORMED SERVICES SAVINGS DEPOSIT

Private Inquirer asks whether Uniformed Services Savings Deposit funds are trust funds controlled by 31 U.S.C. 1321. Legislative history shows direct connection between current law authorizing deposits and pay status referenced originally in predecessor of section 1321. This substantiates trust fund status.

Personnel Law: Civilian Personnel

January 1985

B-216938 Jan. 3, 1985

*OFFICERS AND EMPLOYEES--TRANSFERS--RELOCATION EXPENSES--
ADMINISTRATIVE DETERMINATION--TRANSFER FOR EMPLOYEE'S
CONVENIENCE*

An Internal Revenue Service employee claims real estate expenses under a transportation agreement executed incident to his transfer from Indianapolis, Indiana, to Fairbanks, Alaska. After fulfilling his 2-year commitment to work in Alaska, the employee requested a transfer to Portland, Maine, for personal reasons. The agency honored the transportation agreement by agreeing to pay travel and transportation expenses of employee, his dependents, and their household goods from Fairbanks to Indianapolis. Although real estate expenses had been authorized for his transfer to Fairbanks, the agency refused to authorize these expenses for the Fairbanks to Portland transfer on the basis the transfer was at the employee's request due to personal reasons. The employee's claim may not be allowed since the agency's determination constituted a finding that the transfer was not in the interest of the Government as required by 5 U.S.C. 5724(h).

B-215626 Jan. 7, 1985

*COMPENSATION--REMOVALS, SUSPENSIONS, ETC.--BACKPAY--
ENTITLEMENT*

A reinstated employee eligible for backpay under 5 U.S.C. 5596 may be reimbursed for the costs of training he incurred during period of improper removal if it is clear he would have received the training at Government expense had the removal not occurred. However, there is no authority for reimbursement of private health care costs or consequential damages, under the Back Pay Act.

B-215923 Jan. 8, 1985

*OFFICERS AND EMPLOYEES--STUDENTS--STAY-IN-SCHOOL PROGRAM--
TOUR OF DUTY LIMITATION*

Ms. Thompson, a Stay-in-School employee, worked outside her normal tour of duty with advance permission of her supervisor in order to accommodate her college examination schedule. The goals of the Stay-in-School program require agencies to make reasonable accommodations to students' examination schedules. Therefore, she is entitled to compensation for the hours worked outside her normal tour of duty and to restoration of the annual leave erroneously charged her.

Mr. Serna, a Stay-in-School employee, was asked to work on Saturday, May 4, 1984. This caused him to work 1 1/2 hours beyond 20-hour limit applicable to such employees during the school year. He is entitled to compensation for the work performed even though it exceeded 20 hours that week. The limitation is not a bar to compensation for work performed under occasional special circumstances.

B-214130 Jan. 11, 1985

FRAUD--FALSE CLAIMS--EVIDENCE--INSUFFICIENT

Air Force employee temporarily stationed in Saudi Arabia received advance for living expenses. The Air Force subsequently decided to recoup the entire amount advanced on false claim grounds. Our Office holds that Air Force has not presented sufficient evidence to overcome the presumption of honesty and fair dealing on the part of the employee, which we recognize in travel fraud cases. In computing the amount due employee, however, deduction should be made for meals obtained in government mess or government contractor's messing facilities.

B-215569 Jan. 11, 1985

ORDERS--AMENDMENT--RETROACTIVE--TRAVEL COMPLETED

Travel orders may not be changed retroactively to increase or decrease entitlements after travel is performed. Where a travel order was altered after it was signed to permit travel by privately owned vehicle as in the interest of

the Government, the employee should be limited to reimbursement of the cost that would have been incurred by common carrier unless it is shown that the provision authorizing travel in the Government's interest was a part of the approved travel when the travel was performed.

SUBSISTENCE--PER DIEM--HOURS OF DEPARTURE, ETC.--DURING DUTY HOURS

The 2-day per diem rule does not apply when travel to a temporary duty station is performed on Friday if the employee works on Saturday even if the work performed is not considered official work time for pay purposes.

B-215640 Jan. 14, 1985

CLOTHING AND PERSONAL FURNISHINGS--SPECIAL CLOTHING EQUIPMENT--GOVERNMENT PROPERTY REQUIREMENT

An agency requests permission to purchase a heavy-duty office chair (normally used only by air traffic controllers) for an employee who needs extra physical support due to his height and weight. In denying the agency's request, the General Services Administration cited a GAO decision prohibiting the purchase of special equipment for employees. That decision is not controlling where an agency, with reasonable justification, chooses to purchase an item of office furniture from the Federal Supply Schedule that is normally provided for its employees. Accordingly, the chair may be purchased from appropriated funds. Distinguishes B-187246, June 15, 1977.

B-213629 Jan. 17, 1985

FRAUD--FALSE CLAIMS--EVIDENCE--INSUFFICIENT

Agency recouped subsistence expenses advanced to an employee, determining that he had fraudulently claimed payment of tips to hotel maids. We find that the investigative report relied upon by the agency does not contain evidence sufficient to overcome the existing presumption in favor of honesty and fair dealing. In the absence of such evidence, the employee is entitled to be refunded

amounts covering his subsistence expenses. The agency may reduce reimbursement for maid tips if it determines that the claimed amounts are unreasonably high.

B-215525 Jan. 17, 1985

COURTS--TAX COURT OF UNITED STATES--COURT OF RECORD--TRAVEL EXPENSES

Prior to October 1, 1982, the travel entitlements of commissioners (Special Trial Judges) of the U.S. Tax Court (established under Article I of the Constitution), were tied by 26 U.S.C. 7456(c) to the entitlements of commissioners of the U.S. Court of Claims (established under Article III of the Constitution). Upon abolishment of the Court of Claims and its commissioner system in 1982, 26 U.S.C. 7456(c) was amended to designate subchapter I of chapter 57 of Title 5, U.S. Code, as governing Tax Court commissioner's travel, effective October 1, 1982. Under subchapter I, travel of judicial branch employees is governed by regulations of the Administrative Office of the U.S. Courts, and travel of other employees covered by that subchapter is governed by the Federal Travel Regulations (FTR). Since the U.S. Tax Court as an Article I court is not within the judicial branch, the travel entitlement of its commissioners is governed by the provisions of the FTR, effective October 1, 1982.

B-215347 Jan. 22, 1985

COMMERCE DEPARTMENT--ECONOMIC DEVELOPMENT ADMINISTRATION--APPROPRIATION USE PROPRIETY

The provision in the Department of Commerce and Related Agencies Appropriations Act, 1985, requiring the funding and maintenance of forty-nine Economic Development Representative positions would not preclude the transfer of a vacant Economic Development Representative position from Arizona to Nevada provided that no State would be denied effective representation by the transfer.

B-215826 Jan. 23, 1985
TRAVEL EXPENSES--AIR TRAVEL--BONUSES, GIFTS, ETC.

An employee asks whether he may make personal use of non-transferable bonus lodgings points earned as a result of a combination of Government-funded and personal travel. Any travel promotional materials received as a result of the expenditure of Federal funds are the property of the Government and must be relinquished to an appropriate agency official. Since the bonus lodging points here were earned in part by Government-funded travel, the employee may not make personal use of them.

B-215887, B-215888 Jan. 24, 1985
COMPENSATION--OVERTIME--STANDBY, ETC. TIME--TELEPHONE DUTIES, ETC. AT HOME

Claimants employed as operating room nursing assistants at a Veterans Administration hospital and compensated under the General Schedule are not entitled to annual premium pay for on-call duty since Veterans Administration has not designated their residences as their duty stations and their activities are not severely restricted.

B-216285 Jan. 24, 1985
COMPENSATION--REMOVALS, SUSPENSIONS, ETC.--BACKPAY--UNJUSTIFIED OR UNWARRANTED PERSONNEL ACTION

Navy employee who was terminated upon being advised that he was an alien was subsequently reinstated as a result of a final decision of the Merit Systems Protection Board which ordered the cancellation of the employee's separation. The Navy asks whether its payment of backpay and continued salary to the employee incident to his reinstatement was proper. The payments were proper since the Board is a "proper authority" to determine that an employee has been affected by an unjustified or unwarranted personnel action justifying backpay and the General Accounting Office does not review a final decision of the Board.

B-215834 Jan. 28, 1985

DEFENSE DEPARTMENT--TEACHERS EMPLOYED IN OVERSEAS AREAS--
TRAVEL, ETC. ENTITLEMENT

A full-time teacher in the Department of Defense Overseas Dependents' Schools who is a member of the Advisory Council on Dependents' Education, Department of Education, is entitled to receive compensation incident to her attendance at a meeting of the Advisory Council during the summer school recess. Members of the Advisory Council "who are not in the regular full-time employ of the United States" are entitled to receive compensation incident to their attendance at council meeting. See 20 U.S.C. 929(d). Full-time overseas teachers work only 190 days a school year during 21 biweekly pay periods and the legislative history of the statutory authority for the pay and personnel program for overseas teachers shows that such teachers were distinguished from "full-time employees." Accordingly, the overseas teachers are not to be regarded as "regular full-time" employees for purposes of 20 U.S.C. 929(d).

B-216195 Jan. 28, 1985

TRANSPORTATION--HOUSEHOLD EFFECTS--WEIGHT LIMITATION--
PROFESSIONAL BOOKS, ETC.

Interior Department billed its employee for that portion of the carrier's charges relating to the transportation of 2,980 pounds of household goods that exceeded his weight allowance. Employee's allegation that the carrier fraudulently altered the description of some items to professional books and equipment, weighing 3,020 pounds, is irrelevant since, in the absence of authority to ship professional books and equipment as administrative expense, the items were part of the employee's household goods and, regardless of their description, were properly included in the determination of excess weight. Also, the employee's bare allegation of fraudulent waiting-time charges provides no basis to alter the agency's determination of excess charges where distance, time, and safety regulations support the waiting-time charges.

B-216052 Jan. 29, 1985
TRAVEL EXPENSES--AIR TRAVEL--BONUSES, GIFTS, ETC.

The Central Intelligence Agency (CIA) proposed the sale of nontransferable, expirable promotional materials received as a result of a combination of Government-funded and personal travel to their employees as surplus property. We suggest that this should not be done. Although the CIA is not subject to the laws and regulations governing the travel of most federal employees and the disposition of these promotional benefits, we suggest that an agency should maximize its use of such materials. It would not be known whether such materials could be used to the Government's advantage until the promotional materials expired. Also, the sale of such promotional materials to employees gives the appearance of a conflict of interest. The CIA's authority to receive and dispose of gifts does not provide a basis to sell these promotional materials to CIA employees.

B-214495 Jan. 31, 1985
TRAVEL EXPENSES--FAILURE TO FULFILL CONTRACT--CIVILIAN EMPLOYER

Former employee upon completion of a 2-year tour of duty at Thorne Bay, Alaska, signed a renewal agreement and agreed to remain at the same or another post of duty outside the conterminous U.S. in the service of the U.S. Government for a minimum period of 2 years. Upon completion of renewal agreement travel to Fairbanks, Alaska, an alternate location, he was reassigned to Ketchikan, Alaska. Employee declined the reassignment and resigned his position with the agency 2 months after returning from renewal agreement travel. Employee's reasons for not accepting the reassignment were personal in nature, within his control, and not acceptable to the agency. Hence, employee is not entitled to reimbursement of expenses incurred during renewal agreement travel.

Personnel Law: Military Personnel

January 1985

B-214373 Jan. 3, 1985

*TRANSPORTATION--HOUSEHOLD EFFECTS--MILITARY PERSONNEL--
WEIGHT LIMITATION--COMPENSATION*

An Air Force procedural regulation interpreting the formula for determining overweight costs shown in Volume 1 of the Joint Travel Regulations which would require the service member to pay the cost of lots of household goods shipped after his full weight allowance had been shipped should not be applied if disadvantageous to the member because the applicable Joint Travel Regulations may more readily be interpreted as requiring the overcharge to be calculated on the basis of the aggregate net weight and cost of all lots of the shipment.

*TRANSPORTATION--HOUSEHOLD EFFECTS--MILITARY PERSONNEL--
WEIGHT LIMITATION--EVIDENCE*

A service member questions the Air Force's adjustment to the weight of his household goods because of excess water in certain items of the overseas shipment. Since the service member has presented nothing indicating specifically what the adjustment should have been, the adjustment, which was not unreasonable, and the weight of household goods so adjusted must be relied on in determining the excess weight of household goods shipped by the service member.

*TRANSPORTATION--HOUSEHOLD EFFECTS--WEIGHT--EVIDENCE--
WEIGHT CERTIFICATES AND TICKETS--ERRONEOUS*

Although an estimate of the weight of a service member's household goods was over 4,000 pounds lower than the actual weight as shown on weight certificates, since the service member has not produced evidence to show the weight certificates to be clearly in error, he must bear the cost of the overweight, even though by error the Air Force did not reweigh all lots of the service member's shipment at destination.

B-214983 Jan. 14, 1985

ENLISTMENTS--FRAUDULENT--PAY AND ALLOWANCE CLAIMS--WAIVER
OF FRAUDULENT ENTRY

An individual serving under a void enlistment who is subsequently retired for disability never attained the military status necessary to be entitled to active duty pay and allowances or retired pay. However, under a theory analogous to the de facto rule, the pay and allowances and retired pay he actually received may be retained. Under that rule he is not entitled to a refund for deductions made for Survivor Benefit Plan coverage even if it was determined that he had an eligible beneficiary. The Secretary may waive the fraud in the enlistment which would give the individual military status and entitlement to the pay and retired pay he received. If the fraud is waived, a determination must be made whether the individual he designated under the Survivor Benefit Plan is his spouse. If she is not, the deduction must be refunded since she would not be an eligible beneficiary.

PROCUREMENT LAW

B-215029 Jan. 2, 1985 85-1 CPD 6
CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--SPECIFICATIONS--
RESTRICTIVE--UNDUE RESTRICTION NOT ESTABLISHED

Protester alleging that solicitation calling for requirements contract covering different agencies' needs for ADP services unduly restricts competition fails to meet its burden of showing that agency's method of soliciting its needs lacks a reasonable basis where protester does not dispute agency's cost-saving justification and offers no evidence to support its position that services under requirements contract will not meet agencies' particularized needs.

Protest alleging that solicitation unduly restricts competition because small businesses are effectively excluded from competition is without merit since, even assuming allegation is valid, agency is not obligated to compromise the government's needs in order to maximize competition by small businesses.

CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--SPECIFICATIONS--
SPECIFICITY--SUFFICIENCY

Solicitation is not vague or ambiguous where test task orders described in solicitation provided sufficient detail of agencies' requirements to permit offerors to prepare level-of-effort estimates on an equal footing.

B-215679 Jan. 2, 1985 85-1 CPD 7
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
TECHNICALLY UNACCEPTABLE PROPOSALS--COST, ETC. NOT A FACTOR

Where an offeror's proposal has been determined to be unacceptable, the fact that offeror's price is lower is irrelevant when its proposal is not being considered for award.

B-215679 Jan. 2, 1985 85-1 CPD 7 - Con.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--PREPARATION--
COSTS--DENIED

Claim for proposal preparation costs is denied where there is no showing that the agency acted arbitrarily or capriciously in rejecting the proposal and the proposer did not have a substantial chance of receiving the award.

CONTRACTS--NEGOTIATION--TECHNICAL EVALUATION PANEL--MEMBERS--
APPOINTMENT

The composition of a technical evaluation panel is within the discretion of the contracting agency, and the GAO will not object in the absence of evidence of fraud, bad faith or conflict of interest.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

GAO Bid Protest Procedures require that protests based upon alleged improprieties that are apparent on the face of the request for proposals be filed prior to the closing date for receipt of initial proposals.

B-217145 Jan. 2, 1985 85-1 CPD 8

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER

A protest not filed within 10 working days after the protester knew or should have known of the basis for protest is untimely and will not be considered.

CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS
ADMINISTRATION'S AUTHORITY--CERTIFICATE OF COMPETENCY--
CONCLUSIVENESS

GAO will not review the Small Business Administration's (SBA) refusal to issue a certificate of competency, absent a showing of possible fraud or bad faith on the

part of government officials or allegations that SBA did not follow its own regulations or did not consider material information, since the Small Business Act gives SBA conclusive authority to determine all elements of small business responsibility.

*B-217231 Jan. 2, 1985 85-1 CPD 9
BIDS--PREPARATION--COSTS--NONCOMPENSABLE--UNTIMELY PROTEST*

Claim for proposal preparation costs is not for consideration where protest is dismissed as untimely.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT*

Protest alleging that agency's proposed award to other than low offeror violates the spirit of OMB Circular A-76 is untimely since protest was filed with GAO more than 10 working days after firm's notice of initial a adverse agency action on protest filed with contracting agency.

*B-217313 Jan. 2, 1985 85-1 CPD 10
CONTRACTS--GRANT-FUNDED PROCUREMENTS--PROTEST TIMELINESS*

A complaint concerning the award of a contract under a federal grant is not filed within a reasonable time and, thus, is untimely where the complaint is filed almost 2 months after date complainant knew its basis for complaint.

*B-217320 Jan. 2, 1985 85-1 CPD 11
CONTRACTS--PROTEST--MOOT, ACADEMIC, ETC. QUESTIONS--
FUTURE PROCUREMENTS*

A protest which is based on possible future agency conduct and contract award is premature and will not be considered.

*B-217385 Jan. 2, 1985 85-1 CPD 12
GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--
NONAPPROPRIATED FUND ACTIVITIES*

A protest of the award of a contract by the Federal Reserve Board will not be considered by GAO because

GAO does not have account settlement authority (the basis of GAO bid protest jurisdiction) over the Federal Reserve Board.

*B-214564.2 Jan. 3, 1985 85-1 CPD 13
GENERAL ACCOUNTING OFFICE--CONTRACTS--RECOMMENDATION FOR
CORRECTIVE ACTION*

Recommendation that agency take corrective action of reopening negotiations on contract is modified, since less than 3 months' performance remains on the contract and contracting agency has decided not to exercise contract option and to issue a new solicitation instead.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT
ESTABLISHED*

Prior decision sustaining protest is affirmed on reconsideration where agency requesting reconsideration has failed to show either errors of fact or of law in prior decision.

*B-214175 Jan. 3, 1985 85-1 CPD 14
CONTRACTS--REQUESTS FOR QUOTATIONS--SPECIFICATIONS--BRAND
NAME OR EQUAL--"EQUAL" PRODUCT EVALUATION*

Contention that a brand name or equal solicitation describing various aspects of a particular firm's design approach as salient characteristics should be interpreted as expressing a performance requirement that can be satisfied by other design approaches which perform the same function is denied, since such interpretation is inconsistent with the plain meaning of the solicitation provisions.

*B-216199 Jan. 3, 1985 85-1 CPD 15
CONTRACTS--AWARDS--DELAYED AWARDS--EXTENSION OF BID
ACCEPTANCE PERIOD*

Agency may delay a contract award and request bid extensions to allow low bidders time to obtain the United States Department of Agriculture approval of their plants which was required for contract performance.

B-217367 Jan. 3, 1985 85-1 CPD 16
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER

Protest filed more than 10 days after protester was aware or should have been aware of its basis of protest is untimely.

B-215885 Jan. 4, 1985 85-1 CPD 18
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED

Since the agency's findings concerning the production capability of the firm selected for award were determinative of the firm's listing as a mobilization base producer and thus of its eligibility for award under the solicitation, the agency's decision to list the firm as a mobilization base producer was tantamount to an affirmative determination of responsibility which GAO will not review in the absence of a showing of fraud or bad faith on the part of contracting officials.

CONTRACTS--NEGOTIATION--AWARDS--INITIAL PROPOSAL BASIS--
COMPETITION SUFFICIENCY

An award on the basis of initial proposals was not improper where the solicitation included a notice that award might be made on the basis of initial proposals, without discussions, there has been no showing that discussions occurred, and the number of proposals and the range of prices support the conclusion that there was adequate competition resulting in a reasonable price.

CONTRACTS--NEGOTIATION--RESPONSIVENESS--CONCEPT NOT APPLICABLE
TO NEGOTIATED PROCUREMENTS

Although the concept of responsiveness generally does not apply to negotiated procurements as it applies in formally advertised procurements, certain solicitation requirements may be sufficiently material such that a proposal which fails to include them is technically unacceptable.

B-215885 Jan. 4, 1985 85-1 CPD 18 - Con.
CONTRACTS--PROTESTS--AUTHORITY TO CONSIDER--EXECUTIVE
BRANCH POLICY DETERMINATIONS

Compliance with internal agency policies or procedures concerning the listing of a firm as a mobilization base producer is a matter of executive policy which GAO would normally regard as an internal matter to be resolved within the agency rather than through the bid protest process.

FORMS--DEPARTMENT OF DEFENSE--FORM 1519--PRODUCTION PLANNING
SCHEDULE--TERMINATION

DD Form 1519, by which possible producers of essential military items participate in the Department of Defense Industrial Preparedness Production Planning Program, essentially sets forth the capability of a firm to produce a planned item during a certain time frame during a national emergency. The agreement is not binding on either the planned producer or the government and cannot be considered as relevant to the commitment of a firm to perform under a particular contract.

B-216620.2 Jan. 4, 1985 85-1 CPD 19
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT
ESTABLISHED

Request for reconsideration is denied where the protester has not shown that prior decision was erroneous as to fact or law.

B-217305 Jan. 4, 1985 85-1 CPD 20
BIDS--INVITATION FOR BIDS--AMENDMENTS--NONRECEIPT--BIDDER'S
RISK--BIDDER EXCLUSION NOT INTENDED

Nonreceipt of amendment to invitation for bid and consequent failure to submit a bid is not a viable ground for protest, absent a showing of a deliberate agency attempt to preclude protester from bidding, as long as adequate competition and reasonable prices were obtained.

B-215689.3 Jan. 7, 1985 85-1 CPD 22
BIDDERS--QUALIFICATIONS--LICENSE REQUIREMENTS--GENERAL v.
SPECIFIC--EFFECT ON RESPONSIBILITY

Bid may be rejected as nonresponsive because it is not accompanied by evidence indicating that the bidder has a state certificate required by the solicitation. A requirement that the bidder have a specific license or permit relates to responsibility, that is, capability to perform, and the bidder should be afforded a reasonable opportunity after bid opening to furnish evidence that it meets the requirement.

BIDDERS--QUALIFICATIONS--PREAWARD SURVEYS--UTILIZATION--ADMINISTRATIVE DETERMINATION

Contracting officer has discretion not to conduct a preaward survey, and unless the protester shows possible fraud or bad faith on the part of such an official or the failure to apply definitive responsibility criteria, GAO will not review a decision not to conduct a preaward survey.

CONTRACTS--AWARDS--PROTESTS PENDING

GAO will deny a protest alleging that an agency awarded a contract before resolution of a protest. A deficiency of this sort is only procedural and does not affect an otherwise valid award.

B-216030.2 Jan. 7, 1985 85-1 CPD 23
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT ESTABLISHED

Where protester has not established that decision was based on erroneous interpretation of either fact or law, decision is affirmed.

B-215792 Jan. 8, 1985
CONTRACTS--OFFER AND ACCEPTANCE--ACCEPTANCE--WHAT CONSTITUTES ACCEPTANCE

GAO will disallow a claim based on the allegation that a contract was improperly terminated where there is no

evidence that a formal contract was executed and the record does not clearly indicate that the government intended to be bound.

PAYMENTS--QUANTUM MERUIT/VALEBANT BASIS--ABSENCE, ETC. OF CONTRACT--GOVERNMENT ACCEPTANCE OF GOODS/SERVICES--BENEFIT TO GOVERNMENT REQUIREMENT

GAO will not authorize payment on a quantum meruit basis for expenditures incurred in anticipation of future purchase orders, because the government has not benefited from these expenditures.

B-216775 Jan. 8, 1985 85-1 CPD 25

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT PRIOR TO CLOSING DATE FOR RECEIPT OF PROPOSALS

Protest based upon alleged solicitation impropriety which does not exist in initial solicitation, but which is subsequently incorporated therein, must be protested not later than the next closing date for receipt of proposals. Accordingly, protester's contention that agency improperly extended time period for submission of best and final offers is untimely because this contention was not raised until after the closing date for receipt of the best and final offers.

B-217298 Jan. 8, 1985 85-1 CPD 26

BIDS--"BUYING IN"--NOT BASIS FOR PRECLUDING AWARD

The possibility of a buy-in is not illegal and does not provide a basis upon which an award may be challenged.

CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--AFFIRMATIVE FINDING ACCEPTED

GAO will not review affirmative determination of responsibility except in limited circumstances.

B-217361 Jan. 8, 1985 85-1 CPD 27
BIDS--PRICES--BELOW COST--NOT BASIS FOR PRECLUDING AWARD

The government can accept a below-cost offer from a responsible concern, although the contracting officer is expected to insure that the contractor does not recover any resultant losses through change orders or otherwise.

CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED

GAO will not review an affirmative determination of responsibility absent a showing of fraud or bad faith on the part of procurement officials, or an allegation that a specific responsibility criterion in the solicitation was not met.

CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS

Protest against award to any other offeror is dismissed as premature where the agency still is evaluating proposals it received in response to the solicitation and no award decision has been reached.

CRIMINAL LAW VIOLATIONS--NOT FOR GAO CONSIDERATION

GAO will not consider whether a former government employee has violated the Ethics in Government Act, since that is a criminal statute for interpretation and enforcement by the Department of Justice.

GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--DISPUTES--
BETWEEN PRIVATE PARTIES

Protest that a competitor may be using the protester's proprietary data presents a dispute between private parties, which is not for consideration under GAO's Bid Protest Procedures.

B-217395 Jan. 8, 1985 85-1 CPD 28
SMALL BUSINESS ADMINISTRATION--CONTRACTS--CONTRACTING WITH
OTHER GOVERNMENT AGENCIES--PROCUREMENT UNDER 8(a) PROGRAM--
REVIEW BY GAO

Protest of agency decision to award contract under section 8(a) of the Small Business Act is not for

consideration by GAO in absence of showing of possible fraud or bad faith on the part of government officials or a failure by agency officials to follow applicable regulations.

B-203855.8 Jan. 9, 1985 85-1 CPD 29

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ADDITIONAL EVIDENCE SUBMITTED--
AVAILABLE BUT NOT PREVIOUSLY PROVIDED TO GAO*

Technical publications submitted by a complainant in support of its request for reconsideration of a decision denying a complaint alleging unduly restrictive specifications will not be considered where these publications were available at the time the complaint was made but the complainant failed to submit them at that time.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT
ESTABLISHED*

New data developed after all awards have been made under specifications for a grant-funded procurement, which are alleged to be unduly restrictive, will not be considered in analyzing the propriety of the specifications.

B-217413 Jan. 9, 1985 85-1 CPD 30

BIDS--PRICES--BELOW COST--NOT BASIS FOR PRECLUDING AWARD

There is no legal basis to object to a below-cost offer. Whether an offeror can meet contract requirements in light of its low price is a matter of offeror responsibility, the affirmative determination of which is not reviewed by GAO except in circumstances not present in this case.

B-216067 Jan. 11, 1985 85-1 CPD 31

BIDS--MISTAKES--CORRECTION--DENIAL

Agency properly did not permit correction of error in bid where cost of work omitted from bid price was prepared after bid opening and correction would be a recalculation of bid to include factors not originally considered.

B-216067 Jan. 11, 1985 85-1 CPD 31 - Con.
BIDS--MISTAKES--CORRECTION--EVIDENCE OF ERROR--WORKSHEETS

Agency should have permitted correction of a mistake in bid where the bidder's worksheets provide clear and convincing evidence of both the mistake and intended bid and no other bidder is displaced.

BIDS--MISTAKES--WAIVER, ETC. OF ERROR

Where low bidder alleges two mistakes after bid opening, it is not eligible to receive award unless bidder has waived claim, which it is permitted to do under limited circumstances. Here, although bidder should have been allowed to correct one error, correction of other error was properly refused and, since bidder did not waive that error, its bid was properly not considered for award.

B-216259 Jan. 11, 1985 85-1 CPD 32
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
COST LIMITATIONS

Agency properly excluded the cost of any necessary tanker modifications from the evaluation of offers for a tanker mooring system where the solicitation did not provide for evaluation of these costs.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
REASONABLE

GAO will not object to a technical evaluation on the ground that the agency spent insufficient time conducting the evaluation, where the evaluation was fair, reasonable, and consistent with the stated evaluation criteria.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
TECHNICALLY UNACCEPTABLE PROPOSALS--ADMINISTRATIVE
DETERMINATION

A proposal evaluation concluding that the protester's technical proposal contains weaknesses is unobjectionable where the source selection materials indicate that the agency considered the proposal in accordance

with the evaluation scheme, the evaluation appears to have been reasonable, and the protester does not question the agency's conclusions as to specific weaknesses.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Arguments are untimely and not for consideration by GAO where based on alleged solicitation improprieties but not raised prior to the initial closing date, or where based on other information that was or should have been known to the protester more than 10 days before the protest was filed.

*B-216919 Jan. 11, 1985 85-1 CPD 33
BIDS--RESPONSIVENESS--DESCRIPTIVE LITERATURE--INDICATION THAT ITEM OFFERED FAILED TO MEET SPECIFICATIONS*

Where descriptive literature accompanying bid fails to show conformance with salient characteristics specified in solicitation, the bid is nonresponsive.

CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS ADMINISTRATION'S AUTHORITY--SIZE DETERMINATION

Small Business Administration is empowered by statute to conclusively determine matters of size status for federal procurements, and GAO will neither make nor review such determinations.

*B-211724, B-211724.2 Jan. 14, 1985 85-1 CPD 35
CONTRACTS--NEGOTIATION--SOLE-SOURCE BASIS--PROPRIETY*

Sole-source award of contract on total-package basis is unjustified where evidence supports conclusion agency took little or no action to identify and to evaluate possible alternatives. However, because contract is in advanced stage of completion, agency is in advanced stage of completion, agency should issue solicitation in connection with evaluation of whether to exercise options.

B-211724, B-211724.2 Jan. 14, 1985 85-1 CPD 35 - Con.
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--FREEDOM OF INFORMATION ACT REQUEST
INVOLVEMENT

Agency characterized protester's Freedom of Information Act (FOIA) request as protest and denied it for failure to state a basis of protest; protester subsequently protested to agency in detail after receipt of FOIA materials and protested to GAO within 10 working days of agency's denial of protester's self-styled "appeal of the denial of our protest." GAO finds that protester did not have any basis for protest until receipt of FOIA materials and, therefore, that protester's initial protest was filed only after receipt of material. Subsequent protest filed at GAO within 10 working days of agency's denial of initial protest is timely.

B-215536 Jan. 14, 1985 85-1 CPD 36
CONTRACTS--PROTESTS--NONAPPROPRIATED FUND ACTIVITIES

GAO will not review the award of a franchise for shuttle bus services to Navy personnel where appropriated funds will not be used to pay for the service, no direct benefit will be provided to appropriated fund activities, and no income will flow to the government from the franchise. The government's potential liability for the costs of an improper default termination is not sufficient to invoke GAO's review.

B-215685 Jan. 14, 1985 85-1 CPD
PROPERTY--PRIVATE--DAMAGES, LOSS, ETC.--HOUSEHOLD EFFECTS--
CARRIER LIABILITY

A common carrier is not liable for flood damage to goods stored while in transit, where the flood constituted an act of God and there is no intervening fault attributable to the carrier.

B-216339 Jan. 14, 1985 85-1 CPD 37
CONTRACTS--PROTESTS--MERITS

Complaint that grantee failed to award a food management services contract to the firm offering the

lowest management fee has no merit where the solicitation requested information regarding other factors and provided for the evaluation of such factors and possible negotiation and thus did not contemplate that award would be based on management fee alone.

B-216933.2 Jan. 14, 1985 85-1 CPD 38

*CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--RESPONSIBILITY
DETERMINATION--NONRESPONSIBILITY FINDING--REVIEW BY GAO*

GAO will not consider a challenge to a contracting officer's determination that a small business is non-responsible since by statute the Small Business Administration is to review such determinations.

B-217027 Jan. 14, 1985 85-1 CPD 39

*BIDS--MISTAKES--VERIFICATION--ACCEPTANCE OF CONTRACT AT
INITIAL BID PRICE*

Where contracting officer suspects mistake in bid price, but original bid price is subsequently verified by the bidder, the bid properly may be considered as originally submitted.

BIDS--PRICES--BELOW COST--NOT BASIS FOR PRECLUDING AWARD

Protest that award of contract to low bidder was improper because the bid was allegedly below cost is dismissed since, even if the low bid is below cost as the protester contends, that fact alone does not constitute a legal impediment to award to the low bidder.

CONTRACTS--PROTESTS--ALLEGATIONS--SPECULATIVE

Protest allegation that is not supported by evidence in the written record is regarded as speculation and will not be considered.

B-216420 Jan. 16, 1985 85-1 CPD 40

*CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--PROTESTER
NOT IN LINE FOR AWARD*

Where third low offeror protests against award to either first or second low offeror on basis that neither offeror attended prebid site inspection, pro-

test is dismissed since second low offeror, in fact, did make the site inspection and was in line for award even if the low offeror was not. Therefore, the protester, being the third low offeror, does not have the requisite direct and substantial interest with regard to award to be regarded as an "interested party" under our Bid Protest Procedures.

*B-216547 Jan. 16, 1985 85-1 CPD 41
BIDS--INVITATION FURNISHING REQUIREMENT--EFFECT OF FAILURE
TO RECEIVE*

Even though protester did not receive a copy of the solicitation until the day of bid opening and after the time set for bid opening, there is no basis for sustaining a protest when there is no evidence that the protester was deliberately excluded from bidding or that adequate competition resulting in reasonable prices was not obtained.

*B-216582 Jan. 16, 1985 85-1 CPD 42
CONTRACTS--NEGOTIATION--REQUEST FOR PROPOSALS--FAILURE TO
SOLICIT*

The failure of a prospective offeror to receive notice of the closing date does not necessitate reopening the solicitation where the agency made a significant effort to obtain competition, a reasonable price can be obtained, and there is no evidence of a deliberate attempt to exclude the firm from competition.

CONTRACTS--PROTESTS--BURDEN OF PROOF--ON PROTESTER

The protester has the burden of proving its case and we will not attribute improper motives to procurement personnel on the basis of inference or supposition.

*B-216789 Jan. 16, 1985 85-1 CPD 43
CONTRACTS--NEGOTIATION--AWARDS--NOTICE-- TO UNSUCCESSFUL OFFERORS*

Obligation of agency to notify all bidders of the reasons for awarding a contract to other than the low bidder is inapplicable to negotiated procurements.

B-216789 Jan. 16, 1985 85-1 CPD 43 - Con.
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
COMPETITIVE RANGE EXCLUSION--REASONABLENESS

Agency's failure to include protester's proposal in the competitive range based on the agency's evaluation of the proposal regarding understanding of the scope of work, depth of related experience, and capability of staff was not arbitrary or in violation of applicable statutes and regulations.

B-217105 Jan. 16, 1985 85-1 CPD 44
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT

Protest filed with GAO more than 10 days after protester receives notice of adverse agency action regarding protest filed with contracting agency is untimely.

The fact that a protester continues to pursue its protest with the contracting agency after notice of adverse agency action does not extend the time for filing the protest with GAO.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest regarding an alleged solicitation impropriety apparent on the face of the solicitation must be filed prior to bid opening and will not be considered by GAO when it was initially filed with the contracting agency after bid opening.

B-217428 Jan. 16, 1985 85-1 CPD 45
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE FUNCTION--
INDEPENDENT INVESTIGATION AND CONCLUSIONS--SPECULATIVE
ALLEGATIONS

GAO does not conduct investigations under bid protest procedures to ascertain whether protester should have a basis for protest.

B-217428 Jan. 16, 1985 85-1 CPD 45 - Con.
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER

Protest filed more than 10 working days after protester
knew or should have known basis of protest is untimely.

GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--
PERFORMANCE--CONTRACT ADMINISTRATION MATTER

Whether a bidder has performed contracts in compli-
ance with contract requirements is a matter of contract
administration which GAO will not consider.

B-217499 Jan. 16, 1985 85-1 CPD 46
BIDS--OMISSIONS--PRICES IN BID--SUBITEMS--"NO CHARGE"
NOTATION EVALUATION

Bidder may elect not to charge for certain item
and if bidder indicates commitment to furnish
item in question--as by inserting "no cost" in
bid--its bid is responsive.

BIDS--PRICES--INDEPENDENT PRICE DETERMINATION

Protester's allegation--that awardee was able to
submit low price on current contract because it
was awarded an earlier contract for the same
item at a higher price--does not constitute vio-
lation of independent price determination require-
ment in solicitation or provide other basis for
challenging propriety of contract award.

GENERAL ACCOUNTING OFFICE--JURISDICTION--ANTITRUST MATTERS

GAO does not consider allegations of antitrust
violations.

B-215593 Jan. 17, 1985 85-1 CPD 47
BIDS--INVITATION FOR BIDS--SPECIFICATIONS--MINIMUM NEEDS
REQUIREMENT--ADMINISTRATIVE DETERMINATION--REASONABLENESS

Protest that specification for tube bending machine
is unduly restrictive is denied where agency deter-

mination of minimum needs and necessity of restricting competition was not shown to be unreasonable.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest issue concerning solicitation improprieties first raised in response to agency report is untimely under GAO Bid Protest Procedures and will not be considered.

*B-216106, B-216106.2 Jan. 17, 1985 85-1 CPD 48
CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--
SPECIFICATIONS--MINIMUM NEEDS--ADMINISTRATIVE DETERMINATION*

General Services Administration (GSA) reasonably decided to fulfill federal agencies' requirements for basic electric typewriters by soliciting offers for a requirements contract using standardized functional specifications that will satisfy 95 percent of agencies' anticipated needs. Even though the standard specifications exclude some models that would meet a portion of those needs, 40 U.S.C. 481(a) authorized GSA to standardize specifications for personnel property if, as here, it is deemed advantageous to the government in terms of economy and efficiency.

Specifications for electric typewriters to meet federal agencies' basic requirements may not provide for the evaluation of features that exceed the agencies' minimum needs.

CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT

Firm is not an interested party to protest a solicitation's method for evaluating life-cycle costs, in conjunction with bids to supply typewriters, where the firm cannot furnish a typewriter model that meets the solicitation's functional specifications.

B-216106, B-216106.2 Jan. 17, 1985 85-1 CPD 48 - Con.
CONTRACTS--PROTESTS--MERITS

GAO finds no merit in protest that General Services Administration's method for evaluating life-cycle costs, in conjunction with bids to supply typewriters, is improper where the method is objective and reasonable.

B-216746 Jan. 17, 1985 85-1 CPD 49
BIDS--RESPONSIVENESS--SOLICITATION REQUIREMENTS NOT SATISFIED--
DESCRIPTIVE LITERATURE

Where protester's descriptive literature submitted with its bid in response to solicitation specifying a brand name or equal product shows that protester's "equal" product fails to conform to the salient characteristics listed in the solicitation, the bid was properly rejected as nonresponsive.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Contentions that a specification for brand name or equal product unduly restricted competition, that the brand name product would not meet agency's needs and that the solicitation allowed insufficient time for bid preparation will not be considered since they involve alleged defects apparent from the face of the solicitation and the protest was not filed prior to bid opening as required by Bid Protest Procedures.

B-217470 Jan. 17, 1985 85-1 CPD 50
CONTRACTS--MISTAKES--ALLEGATION AFTER AWARD

Mistake in bid claims alleged after award are not considered by GAO since they are claims "relating to" contracts within the meaning of the Contract Disputes Act of 1978, which requires that all such claims be filed with the contracting officer.

B-217527 Jan. 17, 1985 85-1 CPD 51
CONTRACTS--PROTESTS--CONTRACT ADMINISTRATION--NOT FOR
RESOLUTION BY GAO

Protest against equipment being rejected as unacceptable under a contract is not cognizable under Bid Protest Procedures.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest alleging improprieties in an invitation for bids is untimely and will not be considered on the merits where not filed with GAO prior to bid opening.

B-214954, B-215197 Jan. 18, 1985 85-1 CPD 52
BIDS--RESPONSIVENESS--EFFECT OF CONFIDENTIAL LEGEND--
RESTRICTIVE OF COMPETITION

Bid in the typical formally advertised procurement must publicly disclose at opening the essential nature of the product offered and those elements of the bid relating to price, quantity and delivery. While GAO questions whether the essential nature of the awardee's product in a federal grantee's procurement can be ascertained without looking at proprietary data in the bid, the bid did not have to be rejected, since the grantee specified in its solicitation that only prices, and not the bidders' technical information as to how the solicitation's requirements would be met, would be disclosed.

CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO

The determination of the relative merits of proposals is the responsibility of the grantee, and GAO will not disturb the grantee's determination unless it is shown to be arbitrary.

CONTRACTS--GRANT-FUNDED PROCUREMENTS--PROTEST TIMELINESS

GAO will review a grant complaint only where the complaint has been filed within a reasonable time so that GAO can consider an issue while it is still

practicable to recommend corrective action if warranted. Complaint against grantee's failure to disclose contents of bidders' offers at bid opening filed several months after opening is untimely since it was announced at the opening that the offers would not be made available until they had been evaluated.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--REASONABLE

GAO finds no prejudice to the other offerors from the grantee's request for clarifications to the awardee's proposal since there is no indication that the grantee had any questions regarding the acceptability of the other firms' proposals and since no technical or price advantage accrued to the awardee as a result of the changes made in response to the request for clarifications.

B-215712.2 Jan. 18, 1985 85-1 CPD 54

CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--CANCELLATION--IN-HOUSE GOVERNMENT PERFORMANCE

Agency's decision to cancel a procurement prior to the closing date for receipt of revised proposals will not be reviewed since the agency decided after cancellation to perform the work in-house, which is generally a matter of executive branch policy not within GAO's bid protest function. Similarly, GAO will not review a protest against the agency's failure to issue a cost comparison solicitation as specified by Office of Management and Budget Circular A-76, since that is also a matter of executive policy.

B-216079 Jan. 18, 1985 85-1 CPD 55

CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--SPECIFICATIONS--RESTRICTIVE--AGENCY DETERMINATION TO USE LESS RESTRICTIVE SPECIFICATIONS

GAO will not review contention that a solicitation should be restrictively drawn so as to place the protester in a sole-source position since the purpose of GAO bid protest procedures is to insure that free and open competition is obtained to the maximum practicable extent.

B-216646 Jan. 18, 1985 85-1 CPD 56
CONTRACTS--NEGOTIATION--PRICES--BEST AND FINAL OFFER

Request for second round of best and final offers is not objectionable where valid reason exists for the action.

CONTRACTS--PROTESTS--ALLEGATIONS--SPECULATIVE

Mere speculation that agency improperly disclosed price information to eventual successful offeror is rejected in the absence of evidence of a price leak. GAO does not conduct investigations to establish validity of such speculative statements.

B-216667 Jan. 18, 1985 85-1 CPD 57
BONDS--BID--FAILURE TO FURNISH--BID NONRESPONSIVE

Where bid bond, required to be submitted by invitation for bids, does not designate a surety and only indications of identity of surety are an illegible signature and corporate seal, and accompanying documents do not clearly relate to this procurement, the agency properly determined the bond to be defective and the bid nonresponsive, because it is not clear that a surety intends to be bound.

B-216741 Jan. 18, 1985 85-1 CPD 58
BIDS--RESPONSIVENESS--FAILURE TO FURNISH SOMETHING REQUIRED--PRICES

Bid that fails to include prices for an option year of services is nonresponsive and must be rejected, where the invitation requires such prices and provides that they will be evaluated for award.

B-216830 Jan. 18, 1985 85-1 CPD 59
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO PROTESTER

A protest based upon alleged solicitation ambiguities which are not apparent until after bid opening is

untimely unless filed within 10 days of when the basis for protest is known or should have been known, whichever is earlier.

*B-217149 Jan. 18, 1985 85-1 CPD 60
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--FAILURE TO DILIGENTLY PURSUE PROTEST*

Protester which is challenging award or proposed award on one basis should diligently pursue information which may reveal additional grounds of protest. Protest challenging reasonableness of contract price on small business set-aside, filed 7 weeks after protester was advised of award, is untimely.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest of alleged improprieties apparent prior to the closing date for receipt of initial proposals must be filed prior to that date. Protest against small business set-aside, filed after closing date for receipt of proposals, is untimely.

*B-217408 Jan. 18, 1985 85-1 CPD 61
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SIGNIFICANT ISSUE EXCEPTION*

Untimely protest that certain services should be procured under Brooks Act procedures is not a significant issue and will not be considered on that basis.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO CLOSING DATE FOR RECEIPT OF PROPOSALS*

Protest that an agency should have used the special negotiated procurement procedures prescribed by the Brooks Act for the selection of architectural or engineering firms, filed after the closing date for the receipt of proposals, is untimely since it concerns an apparent solicitation impropriety and, thus, had to be raised before that date.

B-217430 Jan. 18, 1985 85-1 CPD 62

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO CLOSING DATE FOR RECEIPT OF PROPOSALS

A protest alleging improprieties which do not exist in the initial solicitation but which are subsequently incorporated therein must be filed not later than the next closing date for receipt of proposals or it is untimely and will not be considered.

B-217434 Jan. 18, 1985 85-1 CPD 63

CONTRACTS--PROTESTS--AUTHORITY TO CONSIDER--NONAPPROPRIATED
FUND ACTIVITY PROCUREMENTS

Protest against award of contract by Soldiers' and Airmen's Home is dismissed since the award does not involve the direct expenditure of appropriated funds.

B-217453 Jan. 18, 1985 85-1 CPD 64

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER

Protest not received in our Office within 10 working days after the basis of protest is known is untimely and not for consideration on the merits.

B-217457 Jan. 18, 1985 85-1 CPD 65

BIDS--INVITATION FOR BIDS--SPECIFICATIONS--MINIMUM NEEDS
REQUIREMENT--ADMINISTRATIVE DETERMINATION--REASONABLENESS

Where the protester alleges that the solicitation specification requiring windows with wood interior surfaces is unduly restrictive of competition, the contracting agency is required to make a prima facie case that the specification is related to its minimum needs. However, once the contracting agency has made such a case, the protester must bear the burden of affirmatively proving its case. The protester fails to carry this burden when its arguments do not clearly show that the agency's determination of its actual minimum needs has no reasonable basis.

B-217460 Jan. 18, 1985 85-1 CPD 66
BIDDERS--INVITATION RIGHT--MAILING LIST OMISSION

Contracting officer's failure to provide solicitation mailing list to consulting organization is a minor procurement deficiency which does not affect the validity of an otherwise properly awarded contract.

CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--DIRECT INTEREST CRITERION

Consulting organization which is not itself a potential bidder and which fails to identify potential bidder which it purports to represent is not an interested party under GAO's Bid Protest Procedures since it has not shown a direct interest in the outcome of the challenged procurement.

B-217471 Jan. 18, 1985 85-1 CPD 67
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT

Protest filed more than 10 working days after the protester received notice of the contracting agency's denial of an initial protest at that level is dismissed as untimely.

B-217500 Jan 18, 1985 85-1 CPD 68
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS ADMINISTRATION'S AUTHORITY--SIZE DETERMINATION

GAO does not consider protests relating to the small business size status of a concern because the Small Business Administration has conclusive authority to determine size status.

B-217504, et al. Jan. 18, 1985 85-1 CPD 69
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS ADMINISTRATION'S AUTHORITY--SIZE DETERMINATION

Protest against small business size standards contained in solicitations are not for consideration by GAO since the Small Business Administration Office of Hearings and Appeals is established to adjudicate size standard issues.

B-217526 Jan. 18, 1985 85-1 CPD 70

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER

A protest filed more than 10 working days after the
basis for protest is known is untimely and will not
be considered.

B-214171 Jan. 22, 1985 85-1 CPD 73

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
COST REALISM ANALYSIS--REASONABLENESS

Contracting agency's cost realism analysis was
reasonable where it examined all relevant costs
by examining past cost performance, by using an
independent government cost estimate, and by
checking that labor and overhead rates had been
verified previously by cognizant Defense Contract
Audit Service Office.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
TECHNICALLY EQUAL PROPOSALS

Protester's unsupported assertion that its proposal
was technically superior to awardee's proposal is
not sufficient to show that contracting agency's
determination that proposals were technically equal was
unreasonable.

B-215800 Jan. 22, 1985 85-1 CPD 75

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER

Where the protester received a portion of the awardee's
technical proposal in response to a Freedom of Infor-
mation Act request but filed its protest based on
factual errors allegedly found in that portion more
than 10 working days after such receipt, the protest
is untimely filed.

B-215902.2 Jan. 22, 1985 85-1 CPD 76
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
CRITERIA--APPLICATION OF CRITERIA

The evaluation of proposals for a training program must be based on the evaluation criteria contained in the solicitation and not on the criterion of "adequate" as expressed in 5 C.F.R. 410.501, which is used to determine whether or not government training facilities will be used.

B-216248 Jan. 22, 1985 85-1 CPD 77
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED

GAO will not review affirmative determination of responsibility absent a showing of possible fraud or bad faith on the part of the procuring officials or that definitive responsibility criteria in a solicitation have not been applied.

CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--AMBIGUOUS

A solicitation must be read as a whole in a reasonable manner and is not ambiguous if it is not subject to more than one reasonable interpretation.

GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--
PERFORMANCE--CONTRACT ADMINISTRATION MATTER

GAO will not review whether a contractor actually complies with specifications during the performance of a contract because that is a matter of contract administration.

B-216534 Jan. 22, 1985 85-1 CPD 78
BIDS--EVALUATION--PROPRIETY--UPHELD

Agency properly did not evaluate the cost of changing contractors in determining which bid was low since the IFB did not identify that cost as an evaluation factor.

B-216534 Jan. 22, 1985 85-1 CPD 78 - Con.
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED

GAO will not review an affirmative determination of responsibility absent an allegation of fraud or bad faith on the part of contracting officials, or that a definitive responsibility criterion was not met.

PERSONAL SERVICES--DETECTIVE EMPLOYMENT PROHIBITION--
APPLICABILITY

Protest that low bidder is precluded by the Anti-Pinkerton Act from receiving a contract for security guard services is denied, since the statute only restricts the government from contracting with firms that offer quasi-military armed forces for hire, and the protester has not shown that the low bidder is such a concern.

B-216644.3 Jan. 22, 1985 85-1 CPD 79
CONTRACTS--PROTESTS--COURT ACTION--PROTEST DISMISSED

Protest is dismissed where same issues before GAO are before court and court has not requested GAO decision.

B-216702.2 Jan. 22, 1985 85-1 CPD 80
CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--
NONRESPONSIVE BIDDER

A nonresponsive bidder is not an interested party under GAO Bid Protest Procedures when the protest is against only the responsiveness of one bid and there is another bid that could be accepted.

B-216706 Jan. 22, 1985 85-1 CPD 81
CONTRACTS--AWARDS--PROPRIETY--UPHELD

Where agency determines that proposals are technically equal, agency properly awarded firm, fixed-price contract to lower priced offeror since, notwithstanding protester's contention that its proposal represented the "best buy" for the government,

protester has not shown that agency determination that lower priced offer was more advantageous was unreasonable.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
TECHNICAL ACCEPTABILITY--ADMINISTRATIVE DETERMINATION*

GAO will question a determination concerning the technical merit of proposals only upon a clear showing of unreasonableness, abuse of discretion or violation of procurement statutes or regulations. Protester has failed to make a such a showing with respect to agency's determination that proposals are technically equal.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE FUNCTION--
INDEPENDENT INVESTIGATION AND CONCLUSIONS--LIMITATIONS*

GAO standard of review in bid protests is not to independently determine which proposal is most advantageous to the government, but to consider whether contracting agency's selection is legally objectionable.

*B-216790 Jan. 22, 1985 85-1 CPD 82
BIDS--MISTAKES--UNIT PRICE v. EXTENSION DIFFERENCES--RULE*

Where protester's bid indicates discrepancy in unit and extended prices and either price reasonably could have been intended, agency may not rely on bidder's confirmation of bid. Permitting bidder to elect between two prices, only one of which will result in award to bidder, after competitor's bid prices were revealed, allows bidder unfair advantage contrary to principles of competitive bidding.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest alleging improprieties in a solicitation is dismissed as untimely when filed after bid opening because GAO Bid Protest Procedures require filing prior to bid opening.

B-217028 Jan. 22, 1985 85-1 CPD 83
CONTRACTS--AWARDS--LOW BIDDER--RESPONSIVE AND RESPONSIBLE

Award of a formally advertised contract must be based on lowest total price if the bid is responsive and the bidder is responsible. Statement in IFB that the contract will not necessarily be awarded to the lowest bidder merely informs bidders that responsiveness and responsibility are additional factors to be considered before award will be made.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest filed after award, alleging that procurement should have been negotiated rather than formally advertised, is untimely since the alleged solicitation impropriety was apparent prior to bid opening date.

B-217140 Jan. 22, 1985 85-1 CPD 84
CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS

Protest against toilet-cleaning provision in General Services Administration solicitation is denied where GAO has previously upheld validity of provision.

CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS--
CORRECTIVE ACTION PROPOSED TAKEN, ETC. BY AGENCY

Protest against room-cleaning provision in General Services Administration (GSA) solicitation is dismissed as academic where GSA has informed GAO that provision is being amended to conform with views expressed in our prior decision which concluded that provision was defective.

B-215658.2 Jan. 23, 1985 85-1 CPD 85
BIDS--RESPONSIVENESS--BRAND NAME OR EQUAL PROCUREMENT

Under brand name or equal solicitation, bidder who submits bid on an "equal" product with a model number indicated may submit descriptive data for the "equal" model to the government after bid

opening if such data was in existence prior to bid opening. However, the agency is not obligated to go to bidder after opening to obtain descriptive data on the "equal" product.

Bid of manufacturer of brand name which bids model number that represents upgraded version of brand name product is responsive under brand name or equal solicitation even though brand name model item offered by bidder did not have the identical designation as the brand name solicited in invitation. Agency determined that model offered was in essence same brand name item called for in invitation and met all intended salient characteristics.

*B-215832 Jan. 23, 1985 85-1 CPD 86
BIDS--LATE--MODIFICATION--ACCEPTANCE*

Agency may consider telegraphic bid modification which was received late because agency's failure to pay Western Union for its telex service resulted in the suspension of the service which was the paramount cause of the late receipt of the bid modification.

*B-216148 Jan. 23, 1985 85-1 CPD 87
CONTRACTS--NEGOTIATION--ADMINISTRATION DETERMINATION--
ADVERTISING v. NEGOTIATION*

Air Force may negotiate the procurement of base vehicle operations and maintenance services where it requires high level of technical and management competence that cannot be defined adequately in specifications.

*B-216308 Jan. 23, 1985 85-1 CPD 88
BIDS--RESPONSIVENESS--RESPONSIVENESS v. BIDDER RESPONSIBILITY--
MINORITY SUBCONTRACTING GOAL--CERTIFICATION OF COMPLIANCE IN
BID--GRANT-FUNDED PROCUREMENT*

Where grantor requires grantee to assure open and free competition when soliciting bids, grantee must follow basic principles of federal procurement law.

B-216308 Jan. 23, 1985 85-1 CPD 88 - Con.
CONTRACTS--LABOR STIPULATIONS--NONDISCRIMINATION--AFFIRMATIVE
ACTION REQUIREMENTS--RESPONSIVENESS v. RESPONSIBILITY--
SPECIFIC COMMITMENT IN BID REQUIREMENT

Where signed bid including provision in standard bid form submitted by bidder constitutes a commitment to meet minority business enterprise requirements of the solicitation, bid is responsive, and a further requirement to submit information concerning how that commitment will be met, relates to bidder's responsibility.

B-216442 Jan. 23, 1985 85-1 CPD 89
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER

Protest that was not filed within 10 working days after basis of protest was known or should have been known is dismissed.

B-216975 Jan. 23, 1985 85-1 CPD 90
CONTRACTS--PROTESTS--ABEYANCE PENDING COURT ACTION

GAO will not consider a protest where the material issues are before a court of competent jurisdiction which has not expressed an interest in receiving GAO's decision.

B-217290 Jan. 23, 1985 85-1 CPD 91
BIDS--RESPONSIVENESS--DETERMINATION--ON BASIS OF BID AS
SUBMITTED AT TIME OF BID OPENING

Responsiveness must be determined from material available at bid opening and postopening explanations cannot be considered to correct a nonresponsive bid.

BIDS--RESPONSIVENESS--EXCEPTIONS TAKEN TO INVITATION TERMS--
SMALL BUSINESS REQUIREMENTS

Bid on total small business set-aside from a small business concern which indicates that not all supplies to be furnished will be the product of a small business

concern properly is rejected as nonresponsive because bidder would be free to furnish supplies from a large business and thus defeat the purpose of the set-aside.

*B-217306 Jan. 23, 1985 85-1 CPD 92
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER*

Protest filed with GAO more than 10 working days after protester learns of basis for protest is untimely and will not be considered.

*B-217311, B-217311.2 Jan. 23, 1985 85-1 CPD 93
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED*

Protest that agency failed to adequately consider awardee's ability to perform concerns affirmative determination of responsibility that GAO does not review except under circumstances that are not alleged.

CONTRACTS--PROTESTS--ALLEGATIONS--NOT PREJUDICIAL

Protest against rejection of bid is without merit where documents submitted with the protest show that the bid was nonresponsive.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER*

Protest against rejection of bid is untimely where protest was not filed within 10 working days after basis for protest was known.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest alleging that protesters were not accorded adequate time to prepare bids are untimely because the bid opening date was established by the solicitation and the protests were not filed prior to bid opening.

*CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED*

Allegation that awardee is not capable of performing the contract because it lacks both financial and production capacity concerns matters of responsibility. GAO will not review a Department of Energy operating contractor's affirmative determination of responsibility absent a showing of fraud or bad faith or that definitive responsibility criteria in the solicitation were not applied.

CONTRACTS--AWARDS--VALIDITY

Allegation that protester filed to receive adequate debriefing and that contracting officer awarded contract after receiving notice of protest does not affect the validity of award.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
TECHNICALLY UNACCEPTABLE PROPOSALS--COST, ETC. NOT A FACTOR*

Where, even assuming validity of protester's allegation that its proposal should have been considered technically acceptable, firm's offer is not low, firm has not been prejudiced by agency determination that its proposal is technically unacceptable since award was made on basis of initial proposals to low cost, technically acceptable offeror.

CONTRACTS--PROTESTS--ALLEGATIONS--UNSUBSTANTIATED

Unfair or prejudicial motives will not be attributed to procurement officials on the basis of inference or supposition. Allegation that award to a firm resulted from preselection of preference for the awardee is denied where it is not supported by record.

CONTRACTS--PROTESTS--BURDEN OF PROOF--ON PROTESTER

Protester has burden of affirmatively proving that agency's technical evaluation was unreasonable, and protester's disagreement with agency's techni-

cal evaluation that proposal met solicitation requirements for a design which minimized potential radiation exposure is not sufficient, in itself, to satisfy this requirement.

*ENERGY--DEPARTMENT OF ENERGY--PROCUREMENT REGULATIONS--
CONSISTENCY WITH FPR'S--CONTRACT RATIFICATIONS*

Federal Procurement Regulations do not apply per se to a cost-type managing and operating prime contractor of the Department of Energy; rather, a prime contractor must conduct procurements according to terms of contract with agency and its own procedures and conform to the federal norm.

*B-217362 Jan. 24, 1985 85-1 CPD 95
BIDS--INVITATION FOR BIDS--AMENDMENTS--FAILURE TO ACKNOWLEDGE--
BID NONRESPONSIVE*

Bidder--a family-run and family-operated concern--failed to timely acknowledge a solicitation amendment which contained an increased wage rate for general laborers--a trade that the protester effectively admits will be used on the construction project in question. This failure rendered the low bidder's bid nonresponsive. The bidder was not otherwise legally obligated to pay the specified wage rate under a collective bargaining agreement. Further, the bidder was also legally free to subcontract with firms that were subject to this wage rate; however, the concern's bid did not contain a commitment to pay the increased wage rate to general laborers of all potential subcontractors.

*B-217377 Jan. 24, 1985 85-1 CPD 96
BIDDERS--QUALIFICATIONS--MANUFACTURER OR DEALER--
ADMINISTRATIVE DETERMINATION--LABOR DEPARTMENT REVIEW*

Where bidder is rejected as nonresponsible for failure to qualify as a regular dealer or manufacturer

under the Walsh-Healey Act, protest is dismissed since by law such determination is for contracting agency subject to final review by Small Business Administration, where bidder is small business, and Department of Labor.

B-217401 Jan. 24, 1985 85-1 CPD 97

*CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED*

GAO does not review a contracting officer's affirmative determination of responsibility absent a showing of possible fraud or bad faith on the part of the contracting officer, or of misapplication of definitive responsibility criteria, neither of which is present in this case.

B-217550 Jan. 24, 1985 85-1 CPD 98

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
CONSTRUCTIVE NOTICE*

Although the protester alleges that it did not know of the requirement concerning the time for filing of a GAO protest, an untimely protest may not be considered because bidders are on constructive notice of the requirement.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER*

A protest not filed within 10 working days after the protester knew or should have known of the basis is untimely and will not be considered.

B-217588 Jan. 24, 1985 85-1 CPD 99

*CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED*

Allegation that awardee lacks integrity constitutes a protest against an affirmative determination responsibility that GAO will not review in the absence of a showing of possible fraud or bad faith on the part of the contracting officer or a failure to apply definitive criteria of responsibility.

B-217588 Jan. 24, 1985 85-1 CPD 99 - Con.
CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--TRADE ASSOCIATIONS, ETC.

A trade association that has filed a protest on behalf of its members is not an interested party under GAO Bid Protest Procedures where no member of the trade association has a direct or substantial interest in the procurement.

B-215945 Jan. 25, 1985
BIDDERS--DEBARMENT--LABOR STIPULATION VIOLATIONS--DAVIS-BACON ACT--WAGE UNDERPAYMENTS--DEBARMENT REQUIRED

Firm which disregarded obligations to employees by wage underpayments which were hidden by falsified certified payrolls has failed to exercise good faith to exercise good faith compliance with the requirements of the Davis-Bacon Act. Therefore, the names of the firm and its principal officers should be included on the next listing of the debarred bidders list.

B-216735 Jan. 25, 1985 85-1 CPD 100
CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--PROTESTER NOT IN LINE FOR AWARD

A protester challenging a contract award is not an interested party under GAO Bid Protest Procedures, and its protest thus is dismissed, where it would not be in line for award if its protest were upheld.

B-217023.2 Jan. 25, 1985 85-1 CPD 101
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--RECONSIDERATION REQUESTS--TIMELINESS

Request for reconsideration filed more than 1 month after decision is issued is untimely.

B-217491 Jan. 25, 1985 85-1 CPD 102
CONTRACTS--PROTESTS--CONTRACT ADMINISTRATION--NOT FOR RESOLUTION BY GAO

Whether solicitation requirements are met during performance of contract is a matter of contract administration which GAO will not consider.

B-217529 Jan. 25, 1985 85-1 CPD 103
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT

A protest to GAO following an initial protest to the contracting agency not filed within 10 working days of formal notification of the agency's denial of the initial protest is untimely and will not be considered.

B-217541 Jan. 25, 1985 85-1 CPD 104
CONTRACTS--DISPUTES--SETTLEMENT--ADMINISTRATIVE--UNDER
DISPUTES CLAUSE

GSA decision to terminate a contract for default is a matter of contract administration and is to be resolved under Disputes Clause of the contract, not under GAO Bid Protest Procedures.

B-217581 Jan. 25, 1985 85-1 CPD 105
CONTRACTS--PROTESTS--CONTRACT ADMINISTRATION--NOT FOR
RESOLUTION BY GAO

Protest concerning contract modification of firm's maximum order limitation under Federal Supply Schedule is a matter of contract administration which GAO will not consider.

B-217585 Jan. 25, 1985 85-1 CPD 106
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT

Protest to GAO concerning alleged solicitation defects is untimely where firm initially protested to the contracting agency prior to the closing date for receipt of proposals under the solicitation, but did not protest to GAO within 10 working days after closing occurred. Where agency does not take corrective action requested regarding solicitation defects, closing constitutes initial adverse action on the agency-level protest.

B-218001 Jan. 25, 1985 85-1 CPD 107
CONTRACTS--PROTESTS--BASIS FOR PROTESTS REQUIREMENT

Protest that incumbent contractor's proposal was excluded improperly from the competitive range is dismissed for failure to state a valid basis of protest where protester's grounds of protest--its belief that it prepared a complete proposal, and that its proposal reflected its experience as the incumbent, and that the competitive range may have been limited to one firm because its proposal was rejected--do not in themselves state a legal basis to object to the agency's rejection of the firm's proposal.

B-216336.2 Jan. 28, 1985 85-1 CPD 108
BIDS--MISTAKES--CORRECTION--PRICE REDUCTION

Contracting agency need not consider telegraphic bid modification of which it has received notice prior to bid opening from the receiving telegraph office, where the agency has issued regulations prohibiting such consideration.

B-216722 Jan. 28, 1985 85-1 CPD 109
BIDS--RESPONSIVENESS--SOLICITATION REQUIREMENTS NOT SATISFIED--
CONFORMABILITY OF EQUIPMENT, ETC. OFFERED

Where protester concedes the product offered by its dealer did not meet specific solicitation requirements, agency properly found dealer's bid nonresponsive.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest against specification requirements, filed after bid opening, is dismissed as untimely. 4 C.F.R. 21.2(b)(1).

B-217014.2 Jan. 28, 1985 85-1 CPD 110
CONTRACTS--PROTESTS--BURDEN OF PROOF--ON PROTESTER

Request for reconsideration of decision dismissing protest on the ground that protester

did not show that fraud or bad faith was involved in the Small Business Administration denial of a certificate of competency is again dismissed as protester still has not produced evidence of fraud or bad faith.

B-217226, B-218010 Jan. 28, 1985 85-1 CPD 111
GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--
WALSH-HEALEY ACT

Protest alleging that agency incorrectly found protester ineligible for award under Walsh-Healey Act is dismissed, since GAO role in protests concerning status determination under Walsh-Healey Act is limited to considering whether contracting agency complied with procedural requirements and protester does not contend that agency failed to comply with procedures for referral of status determinations to Small Business Administration.

B-218043 Jan. 28, 1985 85-1 CPD 112
CONTRACTS--PROTESTS--CONTRACT ADMINISTRATION--NOT FOR
RESOLUTION BY GAO

Protest against agency approval of materials submitted, after award of contract and start of performance, on the ground that materials are not in accordance with solicitation specifications is summarily dismissed since it concerns contract administration.

B-214414.2 Jan. 29, 1985 85-1 CPD 113
BIDS--INVITATION FOR BIDS--SPECIFICATIONS--MINIMUM NEEDS
REQUIREMENT--ADMINISTRATIVE DETERMINATION--REASONABLENESS

Protest that solicitation limits on level of trace metals contamination in aluminum oxide abrasive grain in effect excluded recycled aluminum oxide and violated policy in favor of the use of recycled materials set forth in 42 U.S.C. 6962 (1982) is denied. The requirement in subsection (c) of the statute that agencies procure items composed of the highest percentage of recovered materials practicable after the date specified in applicable guide-

lines for aluminum oxide have been issued pursuant to subsection (c) and where there is no showing that contracting officials lacked a reasonable basis for determining that the limits were required in order to satisfy the minimum needs of the government.

Protest that specification is unduly restrictive is denied where agency established prima facie support for contention that specification restrictions are needed to meet its minimum needs and protester then fails to meet its burden of showing that restrictions are clearly unreasonable.

*BIDS--INVITATION FOR BIDS--SPECIFICATIONS--RESTRICTIVE--
BURDEN OF PROVING UNDUE RESTRICTION*

Where the only evidence on an issue of fact is the conflicting statements of the protester and the contracting officials, the protester has not carried its burden of affirmatively proving its case.

*B-215739, B-216961 Jan. 29, 1985 85-1 CPD 114
CONTRACTS--PROTESTS--AUTHORITY TO CONSIDER--EXECUTIVE BRANCH
POLICY DETERMINATION*

Protest that item being procured will be used in a manner that is contrary to sound medical practice is not appropriate for consideration under GAO Bid Protest Procedures, since it relates more to Executive Branch policy than to the propriety of the procurement itself.

*B-216288 Jan. 29, 1985 85-1 CPD 115
CONTRACTS--NEGOTIATION--PRICES--OPTIONS*

Protest of the refusal of agency to permit protester to supply purchase option prices during discussion when they were not supplied in initial proposal is denied since solicitation clearly stated that offerors would not be permitted to supply prices for schedule items for which no prices were provided in initial proposals.

B-216288 Jan. 29, 1985 85-1 CPD 115 - Con.
CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--AMBIGUOUS

Protest of rejection of rental-only proposal to supply copy machines is denied since solicitation, while not specifically stating that rental-only proposals would be unacceptable, clearly indicated that all offers must include purchase option prices.

B-216737 Jan. 29, 1985 85-1 CPD 117
BIDS--EVALUATION--AGGREGATE v. SEPARABLE ITEMS, PRICES, ETC.--
PROPRIETY

Where solicitation permitted multiple awards on any combination of eight separate schedules and did not prohibit "all-or-none" or similarly restricted bids, agency erroneously rejected bid conditioned on award of combination of schedules resulting in minimum dollar amount where award of schedules meeting this minimum resulted in lowest overall cost to government, even though one of the schedules awarded was not the lowest bid.

B-217551 Jan. 29, 1985 85-1 CPD 118
CONTRACTS--PROTESTS--AUTHORITY TO CONSIDER--HOUSE OF
REPRESENTATIVES' PROCUREMENT

Protest of procurement by Clerk of House of Representatives is dismissed where contingent funds of House are used. GAO settlement of accounts involving contingent funds is limited by 2 U.S.C. 96 (1982), and GAO bid protest jurisdiction was, at the time the protest was filed, based on authority to adjust and settle accounts.

B-217583 Jan. 29, 1985 85-1 CPD 119
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER

Protest is dismissed as untimely where protester delayed more than 2 months after agency's opening of bids in face of oral protest to agency to file protest with GAO.

B-218067 Jan. 29, 1985 85-1 CPD 120
CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--AWARDEES
OF GOVERNMENT CONTRACTS

A firm that was not a party to a defaulted contract has no standing to protest that the government's reprocurement action is inconsistent with the duty to mitigate damages.

B-215798 Jan. 30, 1985 85-1 CPD 121
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO

Protest that awardee cannot comply with RFP's requirements concerns awardee's responsibility and will not be considered absent circumstances not present in this case.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--COST REALISM--REASONABLENESS

Agency's cost realism analysis is proper where agency demonstrates that its analysis was reasonable and protester fails to dispute agency's explanation. Further, no buy-in has occurred where agency has conducted a proper cost realism analysis.

CONTRACTS--PROTESTS--ALLEGATIONS--PREMATURE

Protest that awardee will derive a competitive advantage in future procurements from receiving proprietary data under the present contract is premature since this allegation does not concern the award under the instant solicitation.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT PRIOR TO CLOSING DATE FOR RECEIPT OF PROPOSALS

Protest filed after the closing date for receipt of proposals that RFP's "Conflict of Interest" provision does not provide adequate protection is untimely since it concerns a defect apparent on the face of the RFP.

B-216211 Jan. 31, 1985 85-1 CPD 122
BIDS--COMPETITION--ONE BID RECEIVED

Where both formally advertised and negotiated procurements have essentially resulted in only one response, GAO expects that GSA will continue to take steps to try to increase competition.

BIDS--INVITATION FOR BIDS--SPECIFICATIONS--SAMPLES

Where there are no adequate specifications or tests to determine whether wire twister pliers meet subjective characteristics, GSA may properly require bid samples.

B-216862 Jan. 31, 1985 85-1 CPD
BIDDERS--QUALIFICATIONS--LICENSE REQUIREMENT--STATE, ETC.
CERTIFICATIONS

Where solicitation does not impose a specific license requirement, agency may make award without regard to whether bidder is licensed under local law.

BIDS--QUALIFIED--BID NONRESPONSIVE

A statement in descriptive literature accompanying a bid providing that specifications are subject to change provides a bidder with an option to deviate from the solicitation requirements after award and is a material deviation rendering the bid nonresponsive where there is nothing else in the bid indicating that such statement was not intended to affect the bidder's obligation under its bid.

TRANSPORTATION LAW

B-215301 Jan. 22, 1985 85-1 CPD 74

*TRANSPORTATION--DIVERTED, RECONSIGINED, ETC. SHIPMENTS--
EFFECT ON THROUGH RATE*

Under carrier tender rule which provides for payment of transportation charges where aircraft is provided but not used for actual airway miles flown "to position and reposition aircraft," carrier may be paid additional time and mileage reflecting flight detour to location at which aircraft was requested, but not used.

*TRANSPORTATION--RATE--DIVERTED, RECONSIGINED, ETC. SHIPMENTS--
FAILURE TO PERFORM*

Carrier is not entitled to payment for aircraft provided, but not used by government, where carrier cannot establish that government ordered plane to pick up shipment.

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